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HUMAN RIGHTS COMMITTEE
Fifty-sixth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

ZAMBIA

1. The Committee considered the second periodic report of Zambia (CCPR/C/63/Add.3 and HRI/CORE/1/Add.22/Rev.1) at its 1487th to 1489th meetings (see CCPR/C/SR.1487-1489), on 26 and 27 March 1996. At its 1498th meeting, on 3 April 1996, the Committee adopted the following comments:

A. Introduction

2. The Committee welcomes the submission of the second periodic report and expresses its appreciation to the State party for the resumption of a constructive dialogue with the Committee. The Committee regrets, however, that although the report provides information on general legislative norms in Zambia, it largely fails to deal with the actual state of implementation of the Covenant in practice and the difficulties encountered in the course of implementation. The Committee appreciates the presence of a delegation which provided helpful information to the Committee in addressing its questions and thus allowed it to obtain a somewhat clearer view of the overall situation in the State party. Unfortunately, the delegation did not include experts on all the issues dealt with in the report or on issues usually raised by the Committee during the consideration of the reports of States parties.

B. Factors and difficulties affecting the implementation of the Covenant

3. The remnants of certain traditions and customs constitute an obstacle to the effective implementation of the Covenant, particularly with regard to equality between men and women.

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C. Positive aspects

4. The Committee recognizes that the State party has begun amending its domestic legislation to bring it into line with the Covenant.

5. The Committee welcomes the introduction of a multi-party system of government as well as efforts undertaken by the State party to strengthen democratic institutions and the multi-party system. In that regard, it takes note of the establishment of a Commission to review the Constitution and of the adoption of measures designed to strengthen the rule of law. It further welcomes the setting up of the Munyama Human Rights Commission.

6. The Committee appreciates the efforts made by the Government to implement views adopted by the Committee under the Optional Protocol.

D. Principal subjects of concern

7. The Committee notes with concern that steps still remain to be taken to harmonize the Constitution with the Covenant and to develop democratic institutions and human rights machinery for better implementation of the Covenant.

8. The Committee also notes with concern that the equality clause in section 11 of the Constitution and the non-discrimination clause in section 23 do not apply to non-citizens and that there are other exemptions in section 23 which are not compatible with articles 3 and 26 of the Covenant.

9. The Committee expresses its concern over the situation of women who, despite some advances, continue to be de jure and de facto the object of discrimination, particularly as regards education, access to work and participation in the conduct of public affairs. The application of customary laws in matters of personal status, marriage, divorce and inheritance rights reinforces outdated attitudes concerning the role and status of women. The Committee also regrets the lack of measures to adequately address problems raised with regard to violence against women and the high maternal mortality resulting from abortion.

10. Section 43 of the Constitution, which restricts the right of individuals to pursue civil remedies against the President in the courts for anything done in his private capacity, is incompatible with the provisions of article 14 of the Covenant.

11. The Committee regrets that the proclamation of a state of emergency in March 1993 was not notified to the Secretary-General in accordance with article 4, paragraph 3, of the Covenant. The Committee also regrets the lack of clarity of the legal provisions governing the introduction and administration of a state of emergency, particularly sections 31 and 32 of the Constitution, which would permit derogations contravening the State party's obligations under article 4, paragraph 2, of the Covenant. The Committee is also concerned that the derogation of rights permissible under section 25 of the Constitution goes far beyond that permissible under article 4, paragraph 2, of the Covenant.

12. The Committee is concerned that the rights contained in articles 7, 9 and 10 of the Covenant are not fully respected. The Committee is concerned in particular that torture and ill-treatment of persons deprived of their liberty continue to be reported and that abuses allegedly committed by police officers and members of security forces are not duly investigated by an independent body.

13. The Committee welcomes the establishment of the National Committee on Penal Reform. It is, however, greatly concerned at the poor conditions in places of detention and the lack of implementation of guarantees in article 10 of the Covenant as well as in the United Nations Standard Minimum Rules for the Treatment of Prisoners.

14. The Committee is concerned that three journalists were found to be in "gross contempt of the National Assembly" without any of the procedural guarantees of fair trial provided for by articles 9 and 14 of the Covenant and that two of these journalists were held in indefinite detention before release, contrary to the provisions of article 9 of the Covenant and even contrary to section 13 of the Constitution and sections 27 and 28 (3) of The National Assembly (Powers and Privileges) Act.

15. The Committee is also concerned by reports of arrests and charges against journalists for the publication of newspaper articles. Use of the criminal process to ensure accountability of the press for the veracity of its reports is not compatible with article 19 of the Covenant. Robust and even harsh criticism of government figures is an essential part of free speech in a democratic country.

16. The Committee is concerned that the proposals made by the Constitutional Review Committee in regard to appointment of judges of the Supreme Court by the President after their retirement and the removal of Supreme Court judges by the President, subject only to ratification by the National Assembly without any safeguard or inquiry by an independent judicial tribunal, are incompatible with the independence of the judiciary and run counter to article 14 of the Covenant.

17. The Committee is also concerned that no measures are taken that pregnancy or parenthood do not affect the continuous education of children.

18. The requirement to sing the national anthem and salute the flag as a condition of attending a State school, despite conscientious objection, appears to be an unreasonable requirement and to be incompatible with articles 18 and 24 of the Covenant.

19. The Committee is further concerned that provisions in the Penal Code which fix eight years as the age of criminal responsibility and which permit children to be charged jointly with adults to be tried in the ordinary criminal courts appear to be incompatible with articles 14, paragraph 4, and 24 of the Covenant.

E. Suggestions and recommendations

20. The Committee strongly encourages the Government to undertake a thorough review of the legal framework for the protection of human rights in the State

party to ensure full conformity with the Covenant. It recommends that appropriate institutions be set up in order to effectively promote the observance of human rights.

21. The Committee recommends that the State party review its laws and make appropriate amendments, including the abrogation of subsections 23 (4) (c) and (d) of the Constitution, to ensure full legal and de facto equality for women in all aspects of social and economic relationships and, particularly in the laws governing the status of women, women's rights and obligations in marriage. It emphasizes the need for the authorities to increase efforts to prevent and eliminate persisting discriminatory attitudes and prejudices against women. Comprehensive anti-discriminatory laws covering both the private and the public spheres should be introduced as well as, where appropriate, affirmative action measures.

22. The Committee recommends that the authorities adopt legislation to bring the domestic legal regime, including section 25 of the Constitution, into harmony with the State party's obligations under article 4 of the Covenant.

23. The Committee recommends that, in view of the current debate referred to in paragraph 18 of the report and the fact that there have been no executions since 1988, the State party consider taking measures for the abolition of the death penalty and the ratification of or accession to the Second Optional Protocol to the Covenant.

24. The Committee urges the authorities to take the necessary steps to ensure that torture, ill-treatment and illegal detention do not occur and that any such cases are duly investigated by an independent authority in order to bring before the courts those accused of having committed such acts and to punish them if found guilty. The Committee also recommends that the report of the Munyama Human Rights Commission be published as soon as possible and that the State party move for the reform of penal law and practice.

25. The Committee recommends that steps be taken in law and in practice to implement fully the provisions of article 10 of the Covenant as well as United Nations Standard Minimum Rules for the Treatment of Prisoners and to make relevant laws and regulations governing the treatment of persons deprived of their liberty known and accessible to the prisoners themselves as well as the police, armed forces, prison personnel and other persons responsible for holding interrogation. Urgent steps should be taken to reduce the number of prisoners through the review of sentences, by speeding up trials or otherwise.

26. The Committee recommends the abolition of imprisonment for civil debt, in compliance with article 11 of the Covenant.

27. Corporal punishment should be abolished, in accordance with article 7 of the Covenant.

28. The Committee recommends that mere criticism by journalists of government officials should not be made a criminal offence.

29. The Committee welcomes the release under court order of two journalists who were detained after being found to be in contempt of the National Assembly. It trusts that the third journalist censured by Parliament will not be detained. It urges that in future all cases in which people are suspected of contempt of Parliament be dealt with by the courts in a manner consistent with all requirements of the Covenant.

30. The Committee calls upon the State party to prepare its third periodic report in compliance with the Committee's guidelines for the preparation of State party reports (CCPR/20/Rev.1). The report should in particular include detailed information on the extent to which each right is enjoyed in practice, and refer to specific factors and difficulties that might impede its application. In undertaking this obligation, the State party may wish to avail itself of the Advisory Services and Technical Assistance Programme of the United Nations Centre for Human Rights.